

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

)	
C&O FINISHES, INC ¹)	
)	
Employer)	
and)	Case No. 29-RC-10338
LOCAL 1, NEW YORK, INTERNATIONAL)	
UNION OF BRICKLAYERS AND ALLIED)	
CRAFTWORKERS, AFL-CIO)	
)	
Petitioner)	
and)	
OPERATIVE PLASTERERS AND CEMENT)	
MASONS INTERNATIONAL ASSOCIATION,)	
LOCAL 530, AFL-CIO)	
)	
Intervenor)	
)	
ART IN CONSTRUCTION, INC.)	
Employer)	
and)	Case No. 29-RC-10342
LOCAL 1, NEW YORK, INTERNATIONAL)	
UNION OF BRICKLAYERS AND ALLIED)	
CRAFTWORKERS, AFL-CIO)	
)	
Petitioner)	
and)	
OPERATIVE PLASTERERS AND CEMENT)	
MASONS INTERNATIONAL ASSOCIATION,)	
LOCAL 530, AFL-CIO)	
)	
Intervenor)	

¹ The names of the parties appear as amended at the hearing.

PERNA GROUP CONTRACTING CORP.)	
)	
Employer)	
and)	Case No. 29-RC-10343
LOCAL 1, NEW YORK, INTERNATIONAL)	
UNION OF BRICKLAYERS AND ALLIED)	
CRAFTWORKERS, AFL-CIO)	
)	
Petitioner)	
and)	
OPERATIVE PLASTERERS AND CEMENT)	
MASONS INTERNATIONAL ASSOCIATION,)	
LOCAL 530, AFL-CIO)	
)	
Intervenor)	
)	
CRESCENT WALL SYSTEMS, INC.)	
)	
Employer)	
and)	Case Nos. 29-RC-10344
LOCAL 1, NEW YORK, INTERNATIONAL)	
UNION OF BRICKLAYERS AND ALLIED)	
CRAFTWORKERS, AFL-CIO)	
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Petitioner)	
and)	
OPERATIVE PLASTERERS AND CEMENT)	
MASONS INTERNATIONAL ASSOCIATION,)	
LOCAL 530, AFL-CIO)	
)	
Intervenor)	

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

C&O Finishes, Inc. (“C&O”), Art in Construction, Inc. (“Art in Construction”), Perna Group Contracting Corp. (“Perna”) and Crescent Wall Systems, Inc. (“Crescent”), herein collectively called the Employers, perform plastering work for various firms engaged in the construction industry. In these consolidated cases, Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL-CIO (“Petitioner”) filed petitions with the National Labor Relations Board, herein called the Board, under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent four separate bargaining units, consisting of all full-time and regular part-time plasterers employed by C&O, Art in Construction, Perna and Crescent, respectively, but excluding all other employees, office clerical employees and supervisors as defined in the Act.

Each of the four Employers is signatory to an independent contractors’ agreement with Operative Plasterers and Cement Masons International Association, Local 530, AFL-CIO (“Intervenor”). These agreements, effective July 1, 2002, through January 31, 2006, encompass the petitioned-for units. The Intervenor intervened on this basis.

A hearing was held before Tara O’Rourke, Hearing Officer of the Board. The Petitioner and Intervenor appeared at the hearing and submitted briefs.² Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

² In a related case, 29-RC-10336 et al., J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors et al. (“Donaldson”), the transcript incorrectly indicated that Intervenor’s Exhibit 3 had been received, when in fact, the exhibit was withdrawn. As a result, both the Intervenor and the Petitioner inadvertently relied on the document in their briefs, in both Donaldson and in the above-captioned case. The Intervenor subsequently filed corrected briefs in the two cases, and the Petitioner and Intervenor moved for the rejection of one another’s briefs (contending that the Intervenor’s corrected briefs were late, and that the Petitioner’s briefs incorrectly relied on the withdrawn document). Because I have not relied on the exhibit at issue, I need not rule on these motions.

The Intervenor contends that the petitions herein are barred by its collective bargaining agreements with the Employers. It argues that these agreements have bar quality because each of the Employers recognized the Intervenor as the majority representative of its employees pursuant to Section 9(a) of the Act. According to the Intervenor, the petitions were also prematurely filed, prior to the open period. The Petitioner takes the position that the applicable collective bargaining agreements are 8(f) agreements, and do not bar the petitions herein. Further, the Petitioner maintains that the Intervenor is defunct, and is not a labor organization as defined in Section 2(5) of the Act.

The Employers did not appear at the hearing, but they submitted signed stipulations that the Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act, and that the petitioned-for bargaining units are appropriate. In addition, they stipulated that they are engaged in commerce and thus subject to the Board's jurisdiction. The Intervenor submitted copies of the signature pages of collective bargaining agreements allegedly signed by the Employers. However, the Employers did not stipulate to the authenticity of these signature pages, and they did not stipulate that they have recognized the Intervenor as the Section 9(a) representative of their employees.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the collective bargaining agreements signed by the Employers are 8(f) agreements, and do not bar the petitions herein. Even if the collective bargaining agreements were converted to 9(a), I find that it appropriate to process the petitions. Further, I have concluded that the Intervenor is a labor organization as defined in Section 2(5) of the Act.

Accordingly, I have directed elections in the units sought by the Petitioner. The facts and reasoning that support my conclusions are set forth below.

ALLEGED 9(A) RECOGNITION OF INTERVENOR

Section 8(f) of the Act provides, in relevant part, that it shall not be an unfair labor practice:

...for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members...because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement...

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Provided further, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).

In accordance with this latter proviso, it is well settled that “a collective-bargaining agreement permitted by Section 8(f)...will not bar the processing of valid petitions filed pursuant to Section 9(c) and 9(e)(3)” of the Act. *John Deklewa & Sons*, 282 NLRB 1375, 1377 (1987). In reviewing the legislative history, the Board concluded that this proviso resulted from Congress’s concern “about employees’ ability to rid themselves of an existing representative, or select an alternate one, once the 8(f) relationship was fully established.” *Deklawaw*, 282 NLRB at 1382. Thus, the proviso “operates as an ‘escape hatch’ for employees subject to unwanted representation imposed before they were hired.” *Deklawaw*, 282 NLRB at 1381. In determining whether a contract has bar quality pursuant to Section 9(a), crucial “employee free choice principles” are at stake. *Deklawaw*, 282 NLRB at 1383. Accordingly, there is “a rebuttable presumption that a bargaining relationship in the construction industry was established

under Section 8(f), with the burden of proving that the relationship instead falls under Section 9(a) placed on the party so asserting.” *Central Illinois Construction*, 335 NLRB 717, 718 (2001)(citing *Deklewa*, 282 NLRB at 1385 n. 41).

A construction union that is party to an 8(f) contract with an employer may “achieve 9(a) status either through a Section 9 certification proceeding or ‘from voluntary recognition accorded...by the employer of a stable work force where that recognition is based on a clear showing of majority support among the union employees, e.g., a valid card majority.’” *Central Illinois Construction*, 335 NLRB at 718 (quoting *Deklewa*, 282 NLRB at 1387 n. 53). Such majority support must exist on the day that recognition is extended. *Comtel*, 305 NLRB at 291; *see also Central Illinois Construction*, 335 NLRB at 720.

A recognition agreement or contract provision “will be independently sufficient to establish a union’s 9(a) representation status where the language unequivocally indicates that (1) the union requested recognition as the majority or 9(a) representative of the unit employees; (2) the employer recognized the union as the majority or 9(a) bargaining representative; and (3) the employer’s recognition was based on the union’s having shown, or having offered to show, evidence of its majority support.” *Central Illinois Construction*, 335 NLRB at 719-720; *but see Nova Plumbing, Inc.*, 330 F.3d 531, 533 (D.C. Cir. 2003)(holding that the Board, in applying *Central Illinois Construction* “despite strong record evidence that the union may not have enjoyed majority support as required by section 9(a)...failed to protect the employees section 7 rights.”) In *Central Illinois Construction*, the Board found that a recognition clause adopted three years prior to the filing of the unfair labor practice charge did not establish 9(a) status because it did

“not state that the Respondent’s recognition was based on a contemporaneous showing, or offer to show, that the Union had majority support.” *Central Illinois Construction*, 335 NLRB at 720.

The Board “will continue to consider relevant extrinsic evidence bearing on the parties’ intent in any case where we find that the contract’s language is not independently dispositive.” *Central Illinois Construction*, 335 NLRB at 720 n. 15.

CONTRACTUAL RECOGNITION CLAUSE – TWO VERSIONS

The record contains two different versions of the independent contractors’ agreement alleged to be a bar in the instant case. Both are effective July 1, 2002, to January 31, 2006. One version contains the following recognition language (herein called “Version 2”) in Article II, Section 2 (“Recognition”):

The Employer recognizes the Union as the exclusive majority representative of all of it [sic] employees covered by this collective bargaining agreement, pursuant to Section 9(A) of the National Labor Relations Act.

This majority status has been established by the fact that the Union has made an unequivocal request for recognition as the majority representative, the Employer has unequivocally recognized the Union as the majority representative, and the Employer’s unequivocal recognition is based on the fact that the Union has shown or offered to show the Employer evidence of its majority support.

The other version contains the following recognition language (herein called “Version 1”), also in Article II, Section 2 (“Recognition”):

The Employers bound by this Agreement may have granted recognition to the Union, in any one of the following scenarios:

(a) Voluntary Recognition

The Employer(s) bound to this Agreement may have recognized the Union as the exclusive majority representative of all employees covered by this Agreement pursuant to Section 9(a) of the Labor-Management Relations Act. This recognition of majority support is based on an unequivocal request for recognition

by the Union as majority representative along with the Union having shown or offered to show evidence of its majority support.

(b) Recognition Following an NLRB Certification

The Employer(s) bound to this Agreement may have recognized the Union as the exclusive majority representative of all employees covered by this Agreement pursuant to Section 9(a) of the Labor-Management Relations Act.

(c) Recognition Follows Some Elections and Some Voluntary Recognition

The Employer(s) bound to this Agreement may have recognized the Union as the exclusive majority representative of all employees covered by this Agreement pursuant to Section 9(a) of the Labor-Management Relations Act. In some cases, this recognition of majority support was based on an unequivocal request for recognition by the Union as majority representative along with the Union having shown or offered to show evidence of its majority support. In other cases, majority support was established by the Union's certification as majority representative by the National Labor Relations Board ("NLRB") following NLRB elections.

The Intervenor's attorney explained that sometime in 2004, the Intervenor revised this recognition language, deleting Version 1 and substituting Version 2. He admitted that this substitution was triggered by a finding in a proceeding arising in Region 2 of the NLRB, Case No. 2-RC-22768, Acanthus, Inc., that the original recognition language ("Version 1") was inadequate to convey 9(a) status. However, the revised independent contractors' agreement does not indicate on the face of the agreement that it was revised in 2004, and it is unclear whether the independent contractors who signed the agreement in 2002 were required to re-execute the agreement in 2004.

The record evidence regarding the contracts signed by C&O, Art in Construction, Perna and Crescent is summarized and discussed below.

C&O FINISHES AND ART IN CONSTRUCTION

With respect to C&O and Art in Construction, the Intervenor provided copies of two signature pages, each containing an effectuating clause at the top of the page. One of

these pages appears to have been signed by Stephen E. Balser, president of Art in Construction, on July 11, 2002. The other page appears to have been filled in by Gregory Ozzimo, president of C&O Finishes, Inc., on July 29, 2002, although the signature line for the Employer is blank. While the July 11 and July 29 dates are handwritten, “this first day of July, 2002,” is typewritten at the top of both pages. The Petitioner and Intervenor stipulated that these pages effectuated the July, 2002, version of the independent contractors’ agreement, which includes the version of the recognition clause (“Version 1”) that was held inadequate to convey 9(a) status in Case No. 2-RC-22768, Acanthus, Inc.

The “Version 1” recognition language indicates that the Employer “may have” recognized the Intervenor, not that they *did* recognize the Intervenor. Although the recognition clause sets forth three possible “scenarios” under which the Employer “may have” recognized the Intervenor, it does not disclose which of these scenarios, if any, applied to C&O Finishes and Art in Construction. Further, the signature page filled in by the president of C&O Finishes, Inc., is unsigned.

Since the contract language is not “unequivocal,” it is not independently dispositive of the Intervenor’s 9(a) status. Accordingly, recourse to extrinsic evidence, such as testimony, regarding the circumstances under which C&O and Art in Construction recognized the Intervenor, is necessary to determine if the Intervenor achieved 9(a) status. *See Central Illinois Construction*, 335 NLRB at 719-720, 720 n.

15. The record contains no such extrinsic evidence. Accordingly, I have concluded that the evidence with respect to C&O and Art in Construction is insufficient to rebut the presumption that a bargaining relationship in the construction industry was established

under Section 8(f) of the Act. *See Central Illinois Construction*, 335 NLRB at 717; *Deklewa*, 282 NLRB at 1385 n. 41.

CRESCENT WALL SYSTEMS, INC.

With respect to Crescent, the Intervenor provided a signature page containing an effectuating clause, similar to the documents provided with respect to C&O and Art in Construction. Handwritten on this page are the name “Dennis Engelfried, pres.,” and the firm name “Crescent Wall Systems New York, Inc. ” The signature line for the Employer is illegible, and it is not clear whether the signature matches the signature on the stipulation signed by Engelfried in the instant case. As with C&O and Art in Construction, there are two different dates on this partial document. “This first day of July, 2002,” is typewritten at the top of the page, and “Aug. 2, 2004” is handwritten at the bottom, in handwriting that appears different from any of the other handwriting on the page. The Petitioner and Intervenor stipulated that this partial document effectuates the version of the independent contractors’ agreement that includes “Version 2” of the recognition clause, which was inserted sometime in 2004.

It is not clear from the face of the document whether Crescent recognized the Intervenor as the 9(a) representative of its employees in 2002 or in 2004, when the language of the recognition clause was revised, or whether the demonstration of majority support was contemporaneous with the recognition. Further, the revised recognition language does not indicate whether the Intervenor showed or (alternatively) offered to show Crescent the evidence of its majority status, or whether this evidence was current or stale at the time of recognition. Finally, Engelfried’s signature is illegible, and the record does not reveal why the name of the Employer as it appears on this document

(“Crescent Wall Systems New York Inc.”) is slightly different from the name stipulated to by Crescent in the instant case (“Crescent Wall Systems, Inc.”).

I have concluded that this partial document is not independently dispositive of the Intervenor’s alleged 9(a) status in the absence of extrinsic evidence. *Central Illinois Construction*, 335 NLRB at 720 n. 15. The record reveals that no extrinsic evidence was submitted to substantiate the Intervenor’s claim of 9(a) status. Accordingly, with respect to Crescent, the Intervenor has failed to rebut the presumption that a bargaining relationship in the construction industry was established under Section 8(f) of the Act. *See Central Illinois Construction*, 335 NLRB at 717; *Deklewa*, 282 NLRB at 1385 n. 41.

PERNA GROUP CONTRACTING CORP.

With regard to Perna, the Intervenor submitted two documents. One of these documents is a signature page containing effectuating language. It appears to have been signed by Joe Perna, president, but not by any representative of the Intervenor.³ Rather, the following unsigned, typed⁴ notation appears beneath the Intervenor’s signature line, at the bottom of the page:

March 24, 2004-Spoke to Joe Perna. He said that name of the company Is: Perna Group Contracting Corp.” Pete gave him the papers to sign on the Job site and he did not have his glasses. As Perna Group Contracting Corp. had signed a Prior agreement May 5, 2002-gave the same number 531 S (job in Manhattan)

At the top of the page, “March 24, 2004” is handwritten. The handwriting appears different from that of Joe Perna, but similar to that of the “Aug. 2, 2004” notation on the Crescent Wall Systems signature page. The Petitioner and Intervenor stipulated that this

³ The other signature pages submitted in this proceeding appear to have been signed by Carmine Mingoia, president of the Intervenor.

⁴ The word “Contracting” is inserted in pen, replacing “Construction.”

partial document effectuates the version of the independent contractors' agreement that includes "Version 2" of the recognition clause, which was inserted sometime in 2004.

In addition, the Intervenor submitted a one-page document on the Intervenor's letterhead, entitled, "Voluntary Recognition Agreement." It sets forth "Version 2" of the recognition language, with the dates of the current agreement inserted. The date of the document, March 24, 2004, is handwritten beneath the signatures of both Joe Perna and Carmine Mingoia, president of the Intervenor.

The notation at the bottom of the signature page, indicating that Joe Perna "did not have his glasses" when he signed the two documents on March 24, 2004, calls into question whether he read the documents in full. In addition, it is not clear from the face of the documents whether Perna recognized the Intervenor as the 9(a) representative of its employees on March 24, 2004, when "Pete gave him the papers to sign on the Job site," or on May 5, 2002, when Perna signed a "Prior agreement." As was the case with Crescent Wall Systems, the revised "Version 2" recognition language does not indicate whether the demonstration of majority support was contemporaneous with the recognition, whether the Intervenor showed or (alternatively) offered to show Perna the evidence of its majority status, or whether this evidence was current or stale at the time of recognition.

Accordingly, I have concluded that the two documents signed by Perna are not independently dispositive of the Intervenor's alleged 9(a) status in the absence of extrinsic evidence, *Central Illinois Construction*, 335 NLRB at 720 n. 15, and that the documents, standing alone, are insufficient to rebut the presumption that a bargaining

relationship in the construction industry was established under Section 8(f) of the Act.

See Central Illinois Construction, 335 NLRB at 717; *Deklewa*, 282 NLRB at 1385 n. 41.

CONCLUSION AS TO 9(A) STATUS

In sum, I have concluded that the independent contractors' agreement does not bar the petitions herein, in light of the Intervenor's failure to prove that it achieved 9(a) status with respect to C&O, Art in Construction, Perna or Crescent. Accordingly, I will direct elections in the bargaining units sought by the Petitioner.

TIMELINESS OF THE PETITIONS

Assuming that the record established that the Intervenor had achieved 9(a) status, I would nonetheless find that the continued processing of these petitions is warranted.

Contracts with fixed terms of more than three years will bar election petitions only during the first three years of the contract. *Vanity Fair Mills, Inc.*, 256 NLRB 1104, 1005 (1981). A contract whose duration is longer than three years is treated, for contract bar purposes, as though it were a contract of 3 years' duration, and a petition may be filed during the 90- to 60-day open period prior to the third anniversary date of the contract. *Dobbs International Services, Inc.*, 323 NLRB 1159, 1160 (1997). Accordingly, the open period for filing a petition in the instant case was from April 2 to May 1, 2005 (60 to 90 days prior to June 30, 2005). The petition in C&O was filed on March 9, 2005, and the petitions in Art in Construction, Perna and Crescent were filed on March 22, 2005.

However, the Board has repeatedly held that "a petition will not be dismissed, even though prematurely filed, if a hearing is directed despite the prematurity of the petition and the Board's decision issues on or after the 90th day preceding the expiration date of the contract." *The Mosler Safe Company*, 216 NLRB 9 (1974); *Westclox Division of General Time*

Corporation, 195 NLRB 1107 (1972); *Royal Crown Cola Bottling Co. of Sacramento*, 150 NLRB 1624, 1625 (1965); *see also Maramount Corp.*, 310 NLRB 508, 512 (1993). Thus, even if the Intervenor is the 9(a) representative of the Employers' employees, the independent contractors' agreement does not bar the instant petitions.

LABOR ORGANIZATION STATUS OF INTERVENOR

Section 2(5) of the Act provides the following definition of "labor organization":

Any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Under this definition, structural formalities are not prerequisites to labor organization status. *Yale New Haven Hospital*, 309 NLRB 363 (1992)(no constitution, by-laws, meetings or filings with the Department of Labor); *see East Dayton*, 194 NLRB at 266 (no constitution or officers). Even if a union is not yet actually representing employees, it is a statutory labor organization if it admits employees to membership and was formed for the purpose of representing them. *See Butler Manufacturing Company*, 167 NLRB 308 (1967); *see also The East Dayton Tool & Die Company*, 194 NLRB 266 (1971). If a labor organization meets the statutory definition, "the fact that it is an ineffectual representative, that its contracts do not secure the same gains that other employees in the area enjoy, that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the [Board's] conclusion...that the organization is a labor organization within the meaning of the Act." *Alto Plastics*, 136 NLRB 850, 851-52 (1962). A labor organization found to be the beneficiary of unlawful employer

domination, interference or assistance under Section 8(a)(2) of the Act does not thereby lose its Section 2(5) status. *Electromation, Inc.*, 309 NLRB 990, 994 (1992).

Further, a labor organization is “defunct” only if it is “unable or unwilling” to represent employees.” *Hershey Chocolate Corporation*, 121 NLRB 901, 911 (1958). A local union is not rendered “defunct” by the mere fact that it has been placed under trusteeship by the international union with which it is affiliated. *Earthgrains Co.*, 334 NLRB 1131 (2001).

In the instant case, the Intervenor and Petitioner stipulated to the record developed in a related case, 29-RC-10336 et al., J.D. Consulting, LLC, d/b/a/ Donaldson Traditional Interiors et al., in which Carmen Barrasso, International trustee of the Intervenor, testified regarding the Intervenor’s labor organization status. Barrasso stated that he is responsible for monitoring the Intervenor, including its financial and record-keeping functions and compliance with the International’s constitution and by-laws. In addition, his duties as trustee include representing the Intervenor’s members, processing grievances on their behalf, meeting with employers, administering and enforcing the Intervenor’s collective bargaining agreements, holding membership meetings, and policing the Intervenor’s territory. As trustee, he performs these functions on behalf of the Intervenor.

The record reflects that when Barrasso was appointed as trustee, the former officers of the Intervenor were removed from their positions. However, elections for new officers are planned “as quickly as possible,” and employees will participate in these elections. Barrasso has reappointed a former field representative, and the Intervenor employs clerical employees and leases buildings and automobiles. The Intervenor has

contracts with about 70 independent contractors, as well as a number of multi-employer associations. The Intervenor continues to refer plasterers to signatory employers.

The record in Donaldson amply demonstrated that the Intervenor meets the standards set forth in Section 2(5) of the Act, and satisfied the statutory definition of labor organization. There is no evidence that the Intervenor is unable or unwilling to represent its members. Accordingly, I conclude that the Intervenor is a labor organization as defined in section 2(5) of the Act.

CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. (a) The parties stipulated that C&O Finishes, Inc., a corporation with its principal place of business located at 125 Verdi Street, Farmingdale, New York, has been engaged in the performance of plastering installation for various firms engaged in the construction industry. During the past year, which period is representative of its annual operations generally, C&O Finishes, Inc., in the course and conduct of its business operations, purchased and received at its Farmingdale, New York, facility, building materials and supplies valued in excess of \$50,000, from various suppliers located outside the state of New York.

(b) The parties stipulated that Art in Construction, Inc., a corporation with its principal place of business located at 55 Washington Street, No. 653, Brooklyn, New York, has been engaged in the performance of plastering installation for various firms engaged in the construction industry. During the past year, which period is representative of its annual operations generally, Art in Construction, Inc., in the course

and conduct of its business operations, purchased and received at its Brooklyn, New York, facility, building materials and supplies valued in excess of \$50,000 directly from various suppliers located outside the state of New York.

(c) The parties stipulated that Perna Group Contracting Corp., a corporation with its principal place of business located at 452 Landing Avenue, Smithtown, New York, has been engaged in the performance of plastering installation and other construction work for various firms engaged in the construction industry. During the past year, which period is representative of its annual operations generally, Perna Group Contracting Corp., in the course and conduct of its business operations, purchased and received at its Smithtown, New York, facility, building materials and supplies valued in excess of \$50,000 from various suppliers located outside the state of New York.

(d) The parties stipulated that Crescent Wall Systems, Inc., a corporation with its principal place of business located at 150 Woodbury Road, Woodbury, New York, has been engaged in the performance of plastering installation for various firms engaged in the construction industry. During the past year, which period is representative of its annual operations generally, Crescent Wall Systems, Inc., in the course and conduct of its business operations, purchased and received at its Woodbury, New York, facility, building materials and supplies valued in excess of \$50,000 directly from various suppliers located outside the state of New York.

Based upon the stipulations of the parties, and the record as a whole, I find that C&O Finishes, Inc., Art in Construction, Inc., Perna Group Contracting Corp. and

Crescent Wall Systems, Inc. are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved herein claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of C&O Finishes, Inc., Art in Construction, Inc., Perna Group Contracting Corp. and Crescent Wall Systems, Inc. constitute four separate units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

(A) All full-time and regular part-time plasterers employed by C&O Finishes, Inc., EXCLUDING all other employees, office clerical employees and supervisors as defined in the Act. (Case No. 29-RC-10338)

(B) All full-time and regular part-time plasterers employed by Art in Construction, Inc., EXCLUDING all other employees, office clerical employees and supervisors as defined in the Act. (Case No. 29-RC-10342)

(C) All full-time and regular part-time plasterers employed by Perna Group Contracting Corp., EXCLUDING all other employees, office clerical employees and supervisors as defined in the Act. (Case No. 29-RC-10343)

(D) All full-time and regular part-time plasterers employed by Crescent Wall Systems, Inc., EXCLUDING all other employees, office clerical employees and supervisors as defined in the Act. (Case No. 29-RC-10344)

DIRECTION OF ELECTIONS

Four separate elections by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the times and places set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are (a) employees in the unit who were employed for at least 30 days in the 12-month period preceding the eligibility date for the election, and (b) employees in the unit who had some employment during that 12-month period and were employed for at least 45 days within the 24 months immediately preceding the eligibility date for the election.⁵ Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated

⁵ *Steiny and Company, Inc.*, 308 NLRB 1323 (1992); *Daniel Construction Company, Inc.*, 133 NLRB 264 (1961), *as modified*, 167 NLRB 1078 (1967).

before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.

Those eligible to vote in each unit shall vote whether or not they desire to be represented for collective bargaining purposes by Local 1, New York, International Union of Bricklayers and Allied Craftworkers, AFL-CIO, by Operative Plasterers and Cement Masons International Association, Local 530, AFL-CIO or by neither labor organization.

LISTS OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to lists of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by each Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB No. 50 (1994). In order to be timely filed, such lists must be received in the Regional Office, One MetroTech Center North-10th Floor, Brooklyn, New York 11201 on or before **July 6, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employers at least three working days prior to an election. If the Employers have not received the notices of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB No. 52 (1995). Failure of the Employers to comply with these posting rules shall be grounds for setting aside the elections whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 13, 2005**. The request may be filed by electronic transmission through the Board's web site at NLRB.Gov but **not** by facsimile.

Dated: June 29, 2005, Brooklyn, New York.

/S/ ALVIN BLYER

Alvin P. Blyer
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National Labor Relations Board
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